Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 279

UNITED TRANSPORTATION UNION,

Petitioner,

—v.—

CLINCHFIELD RAILROAD COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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JURISDICTION

The judgment of the Court of Appeals was entered on March 4, 1970, and a timely petition for rehearing was denied on March 24, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the lower courts correctly concluded that the Submission Agreement submitting claims to a Special Board of Adjustment under Section 3 *Second* of the Railway Labor Act (45 U.S.C. §153 *Second*) involved in this case was limited to the claims listed on Attachment "A" to the Submission Agreement, where the Submission Agree-

ment stated that the Special Board was established "for the purpose of disposing of time claims which are listed in the docket appended hereto as Attachment 'A' . . . . . ", and that the Special Board "shall have jurisdiction of the docket attached hereto."

STATEMENT

The respondent, Clinchfield Railroad Company ("Clinchfield") and the Switchmen's Union of North America ("Union") (now a part of the petitioner, United Transportation Union) on August 22, 1967 executed an agreement to submit certain employee wage claims to a Special Board of Adjustment for decision. Section 3 *Second* of the Railway Labor Act provides a procedure whereby a rail carrier and a union may submit to a Special Board of Adjustment disputes which otherwise would be subject to resolution by the National Railroad Adjustment Board.[1] That Section provides: "The cases which may be consid-

[1] Section 3 *First* of the Act provides a compulsory arbitration procedure administered by the National Railroad Adjustment Board for the settlement of grievances or so-called "minor disputes." See *Elgin, J. & E.R. Co.* v. *Burley*, 325 U.S. 711, 723-28 (1945). In its original form, Section 3 *Second* of the Act, as enacted in 1934 (Act of June 21, 1934, c. 691, 48 Stat. 1189) simply provided that nothing in the provisions establishing the National Railroad Adjustment Board should be construed to prevent carriers and employees from mutually agreeing to the establishment of system, group, or regional boards of adjustment for purposes of adjusting disputes of the character provided in Section 3.

Public Law 89-456, June 20, 1966, 80 Stat. 208, 209, added the second paragraph of Section 3 *Second* of the Act. The new provisions were added to the Act by Congress in an effort to encourage greater use of Special Boards of Adjustment by providing a procedure whereby either the carrier or the union could initiate steps to have a Special Board organized. This was deemed important by Congress in the light of the heavy backlog of some divisions of the National Railroad Adjustment Board. See S. Rep. No. 1201, 89th Cong., 2d Sess. (1966), pp. 1-2. Since the enactment of the 1966 amendment, Special Boards have commonly been styled "Public Law" boards. See Pet. App. C-1, C-4.

ered by such board shall be defined in the agreement establishing it."

The written agreement (Pet. App. C-4, C-6) of the parties establishing the Special Board (the "Submission Agreement") did not contain any general definition by their type of the sort of claims which the Special Board was to consider, but simply provided that the Board was to be established "[f]or the purpose of disposing of time claims which are listed in the docket appended hereto as attachment 'A' . . . ." and that the Board "shall have jurisdiction of the docket attached hereto." (Pet. App. C-4) Attachment A, the Docket Sheet, in turn listed the claims of six men, H.T. Martin, L.W. Brown, W.A. Callahan, S.W. Pilkington, D.H. May, and G.A. Cowden, on 26 specified days, and recited that the listed claims were: "Account Yardmen handling aprons at piggyback track, Kingsport, Tennessee, in alleged violation of agreement." (Pet. App. C-6)

The Special Board met on February 29, 1968, and the next day entered an award on the claims which had been submitted to it. That award recited that: "[c]laim is being made for one day's pay at pro-rata rate for Switchman H. Martin, January 13, 1967, and all other claimants and dates of record, account of Switchmen performing other than their regular duties, i.e., lifting and placing Steel Aprons (runways) on Piggyback Cars, on Piggyback Track, Kingsport, Tennessee." (Pet. App. C-1) The award was favorable to the claims for an extra day's pay, on the theory that the switchmen were being asked to do the work of carmen in handling the aprons, and concluded: "Claims sustained as per findings." (Pet. App. C-3)

Clinchfield proceeded to pay the six workers listed on the Docket of the Special Board an extra day's pay for the 26 days that were listed on that Docket. However, the

Union then nonetheless brought suit in the District Court for the Eastern District of Tennessee, under Section 3 of the Railway Labor Act, purportedly to enforce the award, but demanding judgment in favor of 27 named workers with respect to a total of 227 working dates. (C. A. App. A-5)[2] These were workers and/or dates different from those listed on the Special Board's Docket Sheet. (Pet. App. C-6)

After answer, Clinchfield filed a motion for summary judgment. In connection with that motion, Clinchfield filed a supporting affidavit of its Personnel Officer that the additional claims specified in the Complaint which were not submitted on the Docket Sheet to the Special Board had been voluntarily dropped by the Union's representative when the Docket was made up for attachment to the Submission Agreement, upon that representative's agreeing with Clinchfield's Personnel Officer that the additional claims were barred by a time limitation on claims set forth in Article 23 of the general agreement between the Union and Clinchfield. (Pet. App. C-16) The Union submitted an opposing affidavit disagreeing with this and asserting that there was a general practice only to list a few claims in a submission to a Special Board as a specimen or pattern of claims.[3] (Pet. App. C-8, C-9) The affidavit provided no detail as to this alleged practice and did not explain why

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[2] We so refer to the Appendix attached to petitioner's brief in the Court of Appeals.

[3] The affiant alleged that there had been 25 years of tradition—based solely on his assertion—to support this practice. Since the 1966 statutory amendment (see note 1, p. 2, *supra*) defining for the first time the functions and powers of Special Boards had been on the books only 13 months at the time of the making of the affidavit, it is hard to attach any relevance to the allegation. The 1966 amendment is perfectly clear that: "The cases which may be considered by such [special] board shall be defined in the agreement establishing it."

as many as 26 claims were necessary to provide such a specimen. The affidavit did not, however, contend that there was acquiescence by Clinchfield in any consideration by the Special Board of more than the 26 claims, and the affidavit of Clinchfield's Personnel Officer also made it plain that there was no such acquiescence.

The District Court granted Clinchfield's motion for summary judgment. It found it unnecessary to resolve the question whether the award's reference to the claim of "Switchman H. Martin, January 13, 1967, and all other claimants and dates of record . . . . " was meant simply to cover the other 25 claims listed on the Docket Sheet or more broadly intended to cover all possible claims by switchmen on account of raising aprons on piggyback cars at the Kingsport yard. (Pet. App. A-7) It concluded, however, that in any event, under the provisions of Section 3 *Second* of the Railway Labor Act, even if the Special Board had purported to decide more than the 26 claims submitted to it on the Docket Sheet attached to the Submission Agreement, its action to that extent would have been a nullity. Since Clinchfield had paid the award with respect to the 26 claims listed on the Docket Sheet, the Court awarded summary judgment to Clinchfield. (Pet. App. A-8)

The Court of Appeals for the Sixth Circuit unanimously affirmed *per curiam*, holding that only the claims specified in the Submission Agreement could be considered by the Special Board.

ARGUMENT

1. The rulings of the two courts below that only the 26 claims for the six men listed on the Docket Sheet could be considered and acted upon by the Special Board are clearly correct. Section 3 *Second* of the Railway Labor Act as amended by the 1966 amendment expressly provides that: "The cases which may be considered by such [special] board shall be defined in the agreement establishing it." Here the Submission Agreement was perfectly clear that the claims submitted were those "listed on the docket appended hereto as attachment 'A' . . . ."; and that the Board was to "have jurisdiction of the docket attached hereto." That Docket listed only the 26 claims of the six workers which Clinchfield in fact paid after the award.

Indeed it is far from clear that the award even purported to pass on more than the 26 claims of the six men listed on the Docket Sheet. The award specifically referred to one of the listed claims, that of H. Martin for January 13, 1967, and then referred to "all other claimants and dates of record"; there is no evidence that the record which was referred to was other than the Board's own Docket which listed the other 25 claims submitted to it. But even if the award were viewed as being ambiguous, as the District Court viewed it, the ambiguity must be resolved in such a fashion as to keep the award within the provisions of the Railway Labor Act.

2. The Union suggests (Pet. 11-17) that the summary judgment granted here was improper, citing the conventional authorities to the effect that summary judgment is improper under Civil Rule 56(c) if there is a controverted issue of material fact. See, *e.g.*, *United States* v. *Diebold, Inc.*, 369 U.S. 654 (1962). The position of the Union is that

because there were differing reasons on the two sides as to why only the 26 claims of the six men were listed on the Special Board's Docket Sheet, and because the affidavits indicated that the parties took different views as the hearing as to the scope of the Special Board's authority, summary judgment was improper. But the basis of the District Court's decision was that the text of the Submission Agreement, and to a lesser extent, the text of the award itself, was dispositive of any claim that the award was or could be for the benefit of others than the six men named in the Docket Sheet and with respect to the 26 claims listed thereon. There was no dispute as to what the Submission Agreement or the award itself said; they speak for themselves. The District Court held, as a matter of law, on the basis of the Submission Agreement and the award, that the claim under the award for men and days other than those listed on the Docket Sheet was unfounded. The conclusion was one of law—as to the Special Board's jurisdiction. Any matters as to which there might have been a factual dispute are irrelevant to that conclusion.

3. The Union also suggests (Pet. 18-19) that the decision below somehow conflicts with *Brotherhood of Railway Clerks* v. *Special Board of Adjustment*, 410 F.2d 520, 522-23 (7th Cir. 1969). That case holds that Congress has not authorized any procedure for the review of an award by a Special Board of Adjustment at the suit of a party aggrieved by its award, similar to the procedure for such review authorized by Congress in the case of an award by the National Railroad Adjustment Board through its amendment to the Railway Labor Act in 1966.

But it is clear that Congress has authorized a suit, such as that of the Union here, to enforce an award of a Special Board of Adjustment; the final sentence of Section 3 *Second* of the Act expressly provides that: "Compliance

with such awards [of special boards] shall be enforcible [*sic*] by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board." Those last-mentioned provisions are contained in Section 3 *First* (p) of the Act.[1] Nothing in the *Clerks* case or in Section 3 *First* (p) suggests that a party against whom an award is made may not defend an enforcement suit on the grounds that properly construed in its own terms and in the terms of the authority under which the award was rendered,[2] the award

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[1] One of the basic purposes of the 1966 amendment was to add subsection (q) to Section 3 *First* of the Act, providing for judicial review at the instance of a party aggrieved by an award of the National Railroad Adjustment Board. See S. Rep. No. 1201, 89th Cong., 2d Sess. (1966), pp. 2-3. That amendment, which added the second paragraph of Section 3 *Second* to the Act, incorporated, in effect, the enforcement provisions of Section 3 *First* (subsection (p)) but not the judicial review provisions of subsection (q) of that Section.

[2] In a suit for enforcement of an order of the National Railroad Adjustment Board under Section 3 *First* (p) (a subsection whose procedure was made applicable to awards of Special Boards by the 1966 amendment to Section 3 *Second*), the party against whom enforcement is sought may defend on the grounds of the failure of the order of the Adjustment Board "to conform, or confine itself, to matters within the scope of the division's [of the Adjustment Board] jurisdiction . . . ." Here, if the award is construed as applying to claims other than those listed on the Docket Sheet, it would be beyond the Special Board's jurisdiction and hence impeachable. The Union makes the unsupported suggestion that all that the statutory reference to "jurisdiction" means in this context is whether the dispute in question could properly have been decided by the Adjustment Board, rather than by the Special Board. (Pet. 23) But the text of Section 3 *Second* refutes this contention. The seventh sentence of the second paragraph of Section 3 *Second* provides that: "The members of the [special] board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the [special] board." Thus, it is obvious that matters as to the Special Board's "jurisdiction" may be fixed by the parties by agreement, as was done here in establishing the Special Board's Docket.

did not grant and could not have granted the relief ascribed to it in the complaint. All the *Clerks* case holds is that an unsuccessful party before a Special Board may not bring a proceeding—as he might do with respect to an award of the National Railroad Adjustment Board—to review an award adverse to him. But Clinchfield here, the party against whom the award was rendered, brought no such review proceeding; it paid the award as to the cases listed on the Docket Sheet. It simply defended against an extravagant and unwarranted interpretation of the award and the Submission. Agreement by the Union in an enforcement suit filed by the Union.[3]

It would be an absurdity to suggest that however extravagant a construction is attached to the award by the party prevailing under it, the courts have no jurisdiction to do other than enforce the award in accordance with whatever contentions the prevailing party chooses to make as to its meaning. But that is precisely the effect of the position taken by the petitioner here, which the courts below quite properly rejected.

4. The Petition for Certiorari raises no legal question whatsoever of general applicability or of general importance in the administration of the Railway Labor Act. The issues tendered are peculiar to this case and turn on the con-

[3] The Union cites various cases (Pet. 23-25) giving literal effect to the provision of Section 3 *First* (p) that a suit to enforce an award may be brought by "any person for whose benefit such order [of the Adjustment Board] was made." In effect, this provision has been held to permit individual workers, as well as a union, to bring an enforcement suit. But the Union's argument simply begs the question whether the claims pressed by it on behalf of the additional workers and for additional days in the District Court were claims decided by the Special Board or which, indeed, that Board had the power to decide under the Submission Agreement. Thus, the contention is simply beside the point.

struction of a particular Submission Agreement to a single Special Board of Adjustment. No conflict of circuits or other basis for granting certiorari is developed by petitioner. For these reasons, and in the light of the clear correctness of the decisions of the two courts below, further review is not warranted.

CONCLUSION

For the reasons stated, certiorari should be denied.

Respectfully submitted,

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